

A Nos.6090, 6908 & 7234 of 2019 in Civil Suit No.359 of 2019

Reserved on : 23.10.2019

Pronounced on : 05.11.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Application Nos.6090, 6908 & 7234 of 2019
in
Civil Suit No.359 of 2019

Application No.6090 of 2019

Yennes Infotec (P) Limited,
Represented by its Director -Sales & Strategy, S.Saisheshan,
No.1, 2nd Floor, Gokul Arcade,
No.2, Sardar Patel Road, Adyar,
Chennai – 600 020. applicant

Vs

1. The Managing Director,
eNoah iSolution Pvt. Ltd.,
Elnet Software City, 3rd & 4th Floor,
Rajiv Gandhi Salai, Taramani,
Chennai, Tamil Nadu – 600 113.
2. The Director,
Indian Institute of Technology Gandhinagar,
Palaj, Gandhinagar, Gujarat – 382 355. respondents

Application No.6908 of 2019

The Managing Director,
eNoah iSolution Pvt. Ltd.,
Elnet Software City, 3rd & 4th Floor,
Rajiv Gandhi Salai, Taramani,
Chennai, Tamil Nadu – 600 113.

... applicant

Vs

1. Yennes Infotec (P) Limited,
Represented by its Director -Sales & Strategy, S.Saisheshan,
No.1, 2nd Floor, Gokul Arcade,
No.2, Sardar Patel Road, Adyar,
Chennai – 600 020.
2. The Director,
Indian Institute of Technology Gandhinagar,
Palaj, Gandhinagar, Gujarat – 382 355.

... respondents

Application No.7234 of 2019

The Director,
Indian Institute of Technology Gandhinagar,
Palaj, Gandhinagar, Gujarat – 382 355.

... applicant

Vs

1. Yennes Infotec (P) Limited,
Represented by its Director -Sales & Strategy, S.Saisheshan,
No.1, 2nd Floor, Gokul Arcade,
No.2, Sardar Patel Road, Adyar,
Chennai – 600 020.
2. The Managing Director,
eNoah iSolution Pvt. Ltd.,
Elnet Software City, 3rd & 4th Floor,
Rajiv Gandhi Salai, Taramani,
Chennai, Tamil Nadu – 600 113.

... respondents

A Nos.6090, 6908 & 7234 of 2019 in Civil Suit No.359 of 2019

Application No.6090 of 2019 has been filed under Order XIV Rule 8 of O.S. Rules Read with Order VI Rule 17 of CPC to amend the plaint by substituting the first sentence in para 10 and pa4a 15 of the plaint with the following sentence,

“The plaintiff further submits that the plaintiff had customized the Tally software provided by the 2nd defendant and sold the customized Tally software to the second defendant through the first defendant.”

Application No.6908 of 2019 has been filed under Order XIV Rule 8 of O.S. Rules Read with Section 151 of CPC to hold an enquiry into the acts of perjury committed in the proceedings before this Court in C.S.No.359 of 2019 by filing a false statements by the plaintiff and its authorised signatory Mr.Sai Seshan and prefer a complaint under section 340 of Cr.P.C. against the respondents to the jurisdictional Magistrate.

Application No.7234 of 2019 has been filed under Order XIV Rule 8 of O.S. Rules Read with Order VII Rule 11 of CPC to reject the plaint in C.S.359 of 2019.

For Applicant : Mr.G.K.Muthukumaar

for applicant in A.No.6090 of 2019 &
first respondent in A.Nos.6908 of
2019 & 7234 of 2019

For Respondents : Mr.P.Puhazh Gandhi for first
respondent in A.No.6090 of 2019
& applicant in A.No.6908 of 2019
and second respondent in A.No.
7234 of 2019

Mr.Karthik Sundaram – for applicant in
A.No.7234 of 2019 and for second
respondent A.Nos.6090 & 6908/2019

COMMON JUDGMENT

The application in A.No.6090 of 2019 has been filed to amend the plaint, the application in A.No.6908 of 2019 has been filed to hold an enquiry into the acts of perjury committed in the proceedings before this Court and proceed against the plaintiff under section 340 of Cr.P.C. and Application in A.No.7234 of 2019 has been filed to reject the plaint on the ground that there is no cause of action for filing this suit.

2. Since the main application is for rejection of the plaint, this Court is of the view that all the applications can be disposed in a common Order.

3. The suit has been filed for permanent injunction restraining the defendants and their men from infringing the plaintiff's copyright in its customized Tally Software and from using the customized version of the plaintiff's Tally software and any modification thereof, without the permission of the plaintiff, for mandatory injunction from breaking locks, tampering or modifying the customized Tally Software without the permission of the plaintiff and for damages. In the entire plaint, it is pleaded that the plaintiff is a certified five star partner of Tally Solutions Private Limited and the plaintiff sells, services, customizes and

implements software developed by TSPL after purchasing from TSPL. The plaintiff customizes the tally products so purchased from TSPL to suit the specific requirements of the customers. The copyright in the software developed by TSPL vests with TSPL while the copyright in the customized software products vests with the plaintiff. The plaintiff purchased software from TSPL and later customized the product accordingly and sold it to the second defendant through the first defendant. The first defendant is the prime vendor of the said software product and the plaintiff is the implementer through the first defendant of the said software for the second defendant on site, after customization to suit the requirements of the second defendant.

4. The first defendant by purchase Order dated 15.09.2014 contracted with the plaintiff to purchase and implement a customized Tally Software (Tally ERP.9) for a sum of Rs.19,82,030/-. Accordingly, the plaintiff has supplied the customized software. However, the first defendant defaulted in payment. Hence, the plaintiff at one point of time was forced to install a 'date lock' in the said customized software so that if payments are not made by the first defendant within a specific date, then the date lock would automatically operate and stop running of the customized software of the plaintiff. The payment of instalments were not made despite several reminders and the plaintiff was forced to install a

date lock to be effective from 18.06.2018. Thereafter, certain payments were made by the first defendant. However, the balance instalment of Rs.2 lakhs is still is not paid by the first defendant. Therefore, the plaintiff was forced to set the 'Date lock' for 31.10.2018. However, the first defendant with the help of an ex-employee of the plaintiff, broke the date lock and recompiled the software and made it functional without the permission and consent of the plaintiff, which amounts to infringement of the plaintiff's copyright in the said customization of the software. Hence, the suit has been filed by the plaintiff.

5. The plaintiff has also filed an application to amend the plaint to an extent that the software has not been purchased by him and he has customized the Tally Software provided by the first defendant and sold the customized Tally software to the second defendant through the first defendant.

6. The second defendant has filed an application to reject the plaint mainly on the ground that the plaintiff has miserably failed to disclose the cause of action and failed to produce any document to show how the copyright vest with the plaintiff. The actual relief is only for recovery of money against the second defendant. The plaintiff by clever drafting has attempted to show as if it is a copyright infringement suit. It is his contention that the copyright in the

software customized for the second defendant vests only with the second defendant in terms of the section 17(c) of the Copyright Act, 1957. The plaintiff's own documents show that the copyright is owned by the second defendant. Customization of the software was done for the second defendant and hefty sum of money was paid for the same and therefore, the copyright in the customized software would belong to the second defendant and the plaintiff is not the owner of the copyright. Further, the requirements of Order VII Rule 1(e) itself are not satisfied by the plaintiff and the suit has been filed for recovery of money from the first defendant. There is no cause of action for claiming any right under the Copyright Act.

7. Heard the learned counsel for the applicant and the respondents in all the applications and perused the documents available on record.

8. It is the contention of the learned counsel for the applicant in A.No.7234 of 2019/defendant is that the suit itself is not maintainable and there is no cause of action to file the suit. Admittedly, the software has been purchased by the second defendant and a contract was entered between the second defendant and the first defendant and the plaintiff has been engaged for customization of the software. The plaintiff's own documents clearly indicate that

the software copyright vests with the second defendant. The entire plaint pleadings clearly indicate that there is dispute between the plaintiff and the first defendant with regard to the work assigned to the plaintiff. The plaint pleadings clearly indicate that Rs.2 lakhs balance has to be paid by the first defendant. The documents filed by the plaintiff also clearly indicate that the copyright of the software vests with the second defendant. Therefore, the plaintiff, only in order to conveniently invoke the jurisdiction of this Court, cleverly drafted the suit to make the suit one for infringement without any essential elements of the copyright infringement suit. Hence, there is no cause of action for the plaintiff to file this suit.

9. The counsel for the first defendant also supported the case of the second defendant that the second defendant has purchased the software from TSPL.

10. Repudiating the contentions of the defendants, the counsel appearing for the plaintiff submitted that now the plaintiff has filed an application to amend the plaint to show that the software has been purchased by the second defendant and the pleading in the plaint to the effect that the software has been purchased by the plaintiff is inadvertently made. Whereas, the plaintiff is seeking

to establish its right on the customization of the software. Therefore, it is the contention of the learned counsel that the software was customized and the copyright in the software, developed by the plaintiff, vests with the second defendant. Therefore, it is his contention that the suit cannot be rejected. The plaintiff is claiming its copyright over the customization of the software and not on the software itself. Therefore, it is his contention that the suit cannot be rejected.

11. The suit has been filed for permanent injunction restraining the defendants from infringing the copyright of the plaintiff in the customized Tally Software. The plaint can be rejected under Order VII Rule 11 in the following cases :

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

12. It is well settled that while considering the application under Order VII Rule 11, the Court is not required to take into consideration of the defence set up by the defendants in the written statement or other documents. The question whether the plaint discloses any cause of action and whether the suit is barred by any law is to be seen from the plaint itself and not in the defence set up in the written statement. On a perusal of the entire plaint pleadings, though the plaintiff filed the suit for injunction for infringement of copyright of customized software. In the plaint pleading it is stated that he has purchased the software from TSPL and customized the software and sold it to the second defendant. When the application for rejection of the plaint is filed, the plaintiff has changed its stand seeking an amendment to the effect that the software was not purchased by him. But he has only customized the software. Therefore, the stand of the plaintiff in the plaint that he has purchased the software from TSFL and sold to the second defendant is per se incorrect.

13. When the entire plaint carefully read, the plaintiff has been engaged by the first defendant to customize the software for the second defendant. It is

well settled that the plaint allegations and documents filed by the plaintiff at the time of filing the suit has to be considered while considering the application filed under Order VII Rule 11 to find out whether there is any cause of action for filing the suit or the suit is barred by any other law. Having pleaded that he was entrusted with certain work for customizing the software, the main grievance of the plaintiff appears that the first defendant has not made proper payment despite work has been done by the plaintiff. Therefore, the plaintiff has put a date lock in the software. Thereafter, the first defendant made some payment. Still he has not paid the balance instalment of Rs.2 lakhs. Therefore, the plaintiff has put another date lock. The first defendant, without making the payment, has removed the date lock and made the software functional for the second defendant. It is the contention of the plaintiff that the entire copyright of the customized software vests with the plaintiff. Except stating in two lines in para 21, that the plaintiff is the copyright owner of the customized software, it is not pleaded in the entire plaint, how the plaintiff became the owner of the copyright.

14. The purchase Order filed along with the plaint clearly indicate that the first defendant has issued a purchase Order for IITGN Tally Customization and implementation for a sum of Rs.19,82,030/- and payment terms is also mentioned in the document. The purchase order itself clearly indicate that the

software belong to the second defendant, IIT, Gandhi Nagar. The Clause 5(1) and clause 6 clearly indicate that the prices quoted are for licenses and services to be rendered in India. The above document clearly indicate that the plaintiff is engaged for certain services. License has been given for services to be rendered in India by the plaintiff. The other documents filed by the plaintiff is ledger account for payments made by the first defendant. The accounts are commencing from 01.04.2015 to 15.11.2018 and the balance amount payable by the first defendant is Rs.2,04,384. Infact, in the plaint also it is stated that the first defendant has not paid the balance instalment of Rs.2 lakhs. The entire documents filed and the correspondences between the plaintiff and the first defendant is only with regard to the payment of balance amount and not with regard to the copyright. In the communication of the plaintiff dated July, 04, 2018 to the first defendant filed as a plaint document, the plaintiff himself stated as follows :

“The IP belong to the client hence we need to provide the code base of customization to the client.”

In the reply dated 06.07.2018, the plaintiff has admitted that the customization built for the client is client IP. Similarly, in communication dated 14.07.2018 also it is mentioned that the IP belongs to the client. The plaintiff in above correspondences had admitted that the IP belongs to the second defendant.

15. It is relevant to refer Section 17 of the Copyright Act which reads as follows :

“17 First owner of copyright:- Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that—

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any

agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

⁴ [(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;]

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

⁴ [(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public

undertaking shall, in the absence of any agreement to the contrary,
be the first owner of the copyright therein;

(e) in the case of a work to which the provisions of section
41 apply, the international organisation concerned shall be the first
owner of the copyright therein.”

16. A careful perusal of Section 17(c) of the Copyright Act makes it clear that in the course of employment under the contract of service or apprenticeship, in respect of any work, the employer shall be the first owner of the work. Admittedly, the software belong to the second defendant. The plaintiff initially claimed that he has purchased the software, later filed an application for amendment. The plaint documents clearly indicate that the software belong to the second defendant. When the plaintiff was engaged for certain services, he cannot claim copyright of the software. Such being the position, for the alleged infringement of copyright, there is no cause of action for filing this suit. Further, there is no declaration whatsoever, sought in the plaint, as to how the plaintiff is entitled to copyright for such work, which was done on the basis of the contract assigned to him by the first defendant.

17. When the entire plaint pleadings carefully gone through, the main grievance of the plaintiff is with regard to non payment of certain amount to the plaintiff. There is no privity of contract between the plaintiff and the second defendant. By clever drafting, the plaintiff filed the suit as if it is a suit under the copyright Act to maintain the suit before this court under section 62 of the Copyright Act. Admittedly, the copyright as per the plaintiff's own document vests with the second defendant. Therefore this Court is of the view that not only there is no cause of action for filing the suit or infringement but also the suit is also barred under the Copyright Act. Admittedly, the plaintiff has been engaged for certain services and the plaintiff himself admitted that the IP belongs to the client. Such being the position, the suit is also barred under the copyright Act. Hence, this Court hold that the suit is nothing but abuse of process of law. The money suit has been converted into an infringement suit against the second defendant, the Indian Institute of Technology, Gandhi Nagar. When the suit itself does not show any cause of action for infringement of the alleged copyright, this Court has no other option except to hold that the suit has to be rejected.

18. Accordingly, Application No.7234 of 2019 is allowed and the suit in C.S.No.359 of 2019 is rejected. However, liberty is given to the plaintiff to file a suit for declaration of copyright. In view of rejection of the plaint, the other two

A Nos.6090, 6908 & 7234 of 2019 in Civil Suit No.359 of 2019

applications, one for amendment and other to hold an enquiry into the acts of prejury committed in the proceedings before this Court and proceed against the plaintiff, are also dismissed. Consequently, the connected Original Application No.583 of 2019 in C.S.No.359 of 2019 is closed.

05.11.2019

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Index : Yes/ No

Internet : Yes

Speaking/Non-speaking Order



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A Nos.6090, 6908 & 7234 of 2019 in Civil Suit No.359 of 2019

N.SATHISH KUMAR, J.

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Order in
Application Nos.6090,
6908 & 7234 of 2019 in
Civil Suit No.359 of 2019

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05.11.2019